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EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/003,633

Applicant(s)

MCKINNEY, JERRY L.

Examiner

Igor Borissov

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

Amendment received on 10/18/2004 is acknowledged and entered. Claims 1, 2, 10-13, 17, 20-21, 27, 32, 36, 39, 45, 49-55, 57-58, 60, 64-67, 75-76 and 81-82 have been amended. New claim 88 has been added. Claims 1-88 are currently pending in the application.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 8, 9, 29 and 61 rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claims 8 and 9.** The phrase "*said step of electronically detecting*" lacks antecedent basis.

**Claims 29 and 61.** The word "*may*" renders the claim indefinite because it identifies a potential capability, not an actual method step.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-3, 10, 75-82 and 84-88 are rejected under 35 U.S.C. 101** because the claimed invention is directed to non-statutory subject matter. The claimed invention is not within the technological arts.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings

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and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

*The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter*

*purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. In re Toma at 857.*

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

Contrary to the claims in the above-cited cases, in the present application, the claims 1-3, 10, 75-82 and 84-88 are completely silent with regard to technology and is purely an abstract idea or process steps that are employed completely without the use of any technology whatsoever. The claims are completely devoid of any means to carry out a process implementing the idea of: *automatically monitoring operational equipment status; automatically notifying service companies of detected operational problems; detecting a physical presence of service personnel; determining time associated with said physical presence; electronically storing data related to scheduled inspection of said equipment; automatically storing said operational status data and time associated with said physical presence; and generating a report for regulatory body based on said data.* The method step: *electronically storing data related to scheduled inspection of said equipment* may be understood as merely storing data as a file in the computer. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)). Although *Bowman* is not precedential, it has been cited for its analysis. As per claim 75, the method step of: *"receiving digital data related ... by one or more computers of said third party"* may be understood as inserting a diskette with information embedded therein into the computer, which would constitute a trivial use of technology.

Furthermore, in accordance with MPEP 2106 (IV)(B)(2)(b) "Statutory Process Claims", not all processes are statutory under 35 U.S.C. 101. *Schrader*, 22 F.3d at 296, 30 USPQ2d at 1460. To be statutory, a claimed computer related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts. See *Diamond v. Diehr*, 450 U.S. at 183-184, 209 USPQ at 6 (quoting *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1877)). The claims in the present application do not appear to satisfy either of the two conditions listed above. First, the claims do not include limitations that would suggest a computer is being used to

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transform the data from one form to another that would place the invention in the technological arts. Second, disregarding the fact that there is no computer claimed that would physically transform the data, there does not appear to be any physical transformation of data. The claims merely recite *collecting information*, and *generating a report* based on said collected information, wherein said report appears to be an arbitrary abstract thing and not a discrete value resulting from a calculation of various parameters by a computer or processor. Thus, there neither appears to be any physical transformation of data from one form to another, which is based upon an algorithm or a calculation by a computer or processor, nor is there any technology claimed that would be used to transform the data.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) a network system, or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Furthermore, the preamble comprises a general description of all the elements or steps, which are conventional or known (MPEP 608.01 (i) (e).), and therefore, does not constitute an invention.

Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 20, 22, 24, 25, 27-30, 34 and 39-46 are rejected under 35 USC 102(e) as being anticipated by Carmody (US 2002/0143596).**

**Independent Claims**

Carmody teaches a method and system for monitoring, recording and reporting the servicing of private onsite wastewater treatment systems, comprising:

**Claim 20,**

electronic monitoring means for automatically producing an operational equipment status at each of a plurality of wastewater treatment systems [0072];

data storage means for electronically storing said operational equipment status data, data regarding scheduled inspections of said plurality of wastewater treatment systems (pending service notices) [0119]; and data regarding the assigned service provider (a responsible party) [0114];

a web server configured to generate a web site accessible by a computer of a regulatory body/government agency [0075], said server further configured to generate reports regarding compliance with said scheduled inspections, operational equipment status and responsible parties [0094]; [0131]; [0074].

**Claim 27,**

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Interconnecting a plurality of wastewater treatment systems with one or more computers [0094];

receiving information regarding said operational equipment status of each of said plurality of wastewater treatment systems [0119];

storing said information regarding said operational equipment status of each of said plurality of wastewater treatment systems [0119];

electronically, via a web server, connecting to one or more computers of a regulatory (governmental) entity [0092]; and

communicating via said web server with said computers of said regulatory (governmental) entity relating said received information [0092].

**Claim 39,**

monitoring operational equipment status at each of a plurality of wastewater treatment systems [0072];

storing information regarding said operational equipment status of each of said plurality of wastewater treatment systems [0119];

generating a system website [0092]; and

providing access to said system website by said regulatory body/government agency to retrieve information (reports) regarding said operational equipment status of each of said plurality of wastewater treatment systems [0092]; [0075].

**Dependent Claims**

**Claims 22 and 42.** Generating reports relating to compliance with scheduled inspections, timely maintenance and service events for said wastewater treatment systems [0073]; [0065].

**Claim 24.** Said system including printing means for providing reports over regular mail [0126].

**Claim 25.** Said system, wherein said data includes ownership information of said responsible parties [0079]; [0104].

**Claim 28.** Enabling a network connection to said one or more computers of a regulatory (governmental) entity [0092].

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**Claim 29.** Utilizing said information by regulatory body/government agency for generating reports regarding said plurality of wastewater treatment systems [0073]; [0074].

**Claim 30.** Generating reports relating to compliance with scheduled inspections, timely maintenance and service events for said wastewater treatment systems [0075]; [0065].

**Claim 34.** Said method wherein said received data includes data related to operational equipment status data, data regarding scheduled inspections of said plurality of wastewater treatment systems [0119]; and data regarding the assigned service provider (related to system inspection and repairs) [0114].

**Claim 40.** Providing access to said website by service companies [0088].

**Claim 41.** Utilizing said information by regulatory body/government agency for generating reports regarding said plurality of wastewater treatment systems [0073]; [0074].

**Claim 43.** Generating reports relating to non-compliance with scheduled inspections, timely maintenance and service events for said wastewater treatment systems, including data related to communicating with POWTS owners (responsible parties) [0075]; [0065].

**Claim 44.** Said method as in claim 43, wherein said data includes address information of said responsible parties [0079]; [0104].

**Claim 45.** Storing data related to communication with POWTS owners (responsible parties) [0103].

**Claim 46.** Said data including data related to operational equipment status data, data regarding scheduled inspections of said plurality of wastewater treatment systems [0119]; and data regarding the assigned service provider (related to system inspection and repairs) [0114].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 21, 32, 33, 37, 75-78, 80, 81, 85 and 87-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody.**

Carmody teaches said method for monitoring, recording and reporting the servicing of private onsite wastewater treatment systems, comprising:

**Independent Claim**

**Claim 75,**

receiving information regarding operational equipment status, including date and time of servicing of each of a plurality of wastewater treatment systems by a system computer [0119]; [0129];

storing said received information regarding operational equipment status, including date and time of servicing of each of a plurality of wastewater treatment systems [0119]; [0129];

providing a report from said system to a regulatory (government) entity regarding said received information regarding operational equipment status, including date and time of servicing of each of a plurality of wastewater treatment systems [0073]; [0074].

Carmody does not specifically teach that said system is a third party system.

However, Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity which obtains reports from said system, said reports utilizing said received information.*

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said system is a third-party system, because it would advantageously enhance the reliability of the systems reports.

**Dependent Claims**

**Claims 21 and 32.** Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity* which obtains reports from said system, said reports utilizing said received information [0053] – [0056].

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said system is a third-party system, because it would advantageously enhance the reliability of the systems reports.

**Claims 33 and 80.** Storing contact data related to communicating with POWTS owners (responsible parties) [0075]; [0104].

**Claims 37 and 85.** Carmody teaches monitoring the service history of each wastewater treatment system [0072]. Carmody does not specifically teach that said service history includes a record of when said wastewater treatment system starts initial operation for a first time or after a shutdown wherein repairs are made.

However, Carmody does teach that improper servicing and maintenance of wastewater treatment systems can pose a serious threat to both public health and the environment [0052].

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said service history includes a record of when said wastewater treatment system starts initial operation for a first time or after a shutdown wherein repairs are made, because a comprehensive monitoring of said wastewater treatment systems would advantageously ensure the compliance with service requirements for said wastewater treatment systems, thereby ensure the avoidance of damage made to public health and the environment.

**Claim 76.** Interconnecting a system web server with computers of said regulatory (governmental) entity [0092].

**Claim 77.** Generating information (reports) relating to non-compliance for said wastewater treatment systems, and providing accesses to said information online to all parties [0075]; [0065].

**Claim 78.** Generating reports relating to compliance with scheduled inspections, timely maintenance and service events for said wastewater treatment systems [0075]; [0065].

**Claim 81.** Said data as in claim 80, further including address information of said parties [0079]; [0104].

**Claim 87.** Said method wherein said environmental equipment systems comprise one or more wastewater treatment systems [0072].

**Claim 88.** Said method, wherein said system provides notice of noncompliance (certification) with scheduled inspection [0074].

**Claims 1-7, 12-18, 26, 31, 35, 38, 47, 49, 50-56, 58-63, 65-74, 79, 82, 83 and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason (US 6,317,039).**

Carmody teaches a method and system for monitoring, recording and reporting the servicing of private onsite wastewater treatment systems, comprising:

**Independent Claim**

**Claim 1,**

· providing a system which provides services related to the monitoring and reporting operational equipment status of a plurality of wastewater treatment systems [0072];

automatically monitoring operational equipment status of a plurality of wastewater treatment systems [0072];

automatically notifying, via a web site, service companies of operational problems detected at each of said plurality of wastewater treatment systems [0088];

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setting up an appointment for service personnel [0124];

determining a date and time associated with service conducted by service personnel at each of said plurality of wastewater treatment systems [0129]; [0130]; [0132];

electronically storing inspection data related to scheduled inspections for each of said plurality of wastewater treatment systems [0115] – [0119];

generating a report for said regulatory (governmental) entity related to compliance with said scheduled inspection and timely repairs for each of said plurality of wastewater treatment systems based on said inspection data, said operational data, and said time data [0069]; [0074];

enabling selective generation of said report by said regulatory body utilizing said website [0069]; [0131];

providing an inspection schedule for said plurality of wastewater treatment systems that is accessible through said computer network presence by said one or more service companies [0119] – [0124].

Carmody does not specifically teach that said system is a third party system.

However, Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity* which obtains reports from said system, said reports utilizing said received information.

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said system is a third-party system, because it would advantageously enhance the reliability of the systems reports.

Also, Carmody does not specifically teach detecting a physical presence of service personnel.

Thomason teaches a method and system for remote assistance and review of a technician serving equipment, wherein the technician is equipped with video and audio communication means for communication in real time with a manager or other authority (C. 2, L. 14-18). Transmission of video images of a technician servicing remote job site equipment to the authority site in real time obviously indicates detecting a physical

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presence of said technician at the servicing equipment, and determining time associated with said physical presence of said technician.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Carmody to include providing video and audio communication means between a technician, servicing remote job site equipment, and an authority site, for two-way communication in real time, as disclosed in Thomason, because it would advantageously allow to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claim 12.**

means for monitoring operational equipment status of a plurality of wastewater treatment systems [0072];

means for determining a date and time associated with service conducted by service personnel at each of said plurality of wastewater treatment systems [0129]; [0130]; [0132];

means for electronically storing inspection data related to scheduled inspections for each of said plurality of wastewater treatment systems [0115]; [0119];

a web server configured to generate a report for a regulatory (governmental) entity related to compliance with said scheduled inspection and timely repairs for each of said plurality of wastewater treatment systems based on said inspection data, said operational data, and said time data [0069]; [0074].

Carmody does not specifically teach means for detecting a physical presence of service personnel and time of said presence.

Thomason teaches a method and system for remote assistance and review of a technician servicing equipment, wherein the technician is equipped with video and audio communication means for communication in real time with a manager or other authority (C. 2, L. 14-18). Transmission of video images of a technician servicing remote job site equipment to the authority site in real time obviously indicates detecting a physical presence of said technician at the servicing equipment, and determining time associated with said physical presence of said technician.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Carmody to include providing video and audio communication means between a technician, servicing remote job site equipment, and an authority site, for two-way communication in real time, as disclosed in Thomason, because it would advantageously allow to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claim 49.** Carmody teaches:

monitoring operational equipment status of a plurality of private wastewater treatment systems [0072];

determining a date and time associated with service conducted by service personnel at each of said plurality of wastewater treatment systems [0129]; [0130]; [0132];

storing inspection data related to scheduled inspections for each of said plurality of wastewater treatment systems [0115]; [0119];

electronically generating reports related to compliance with said scheduled inspection and timely repairs for each of said plurality of wastewater treatment systems based on said inspection data, said operational data, and said time data [0069]; [0074].

Carmody does not specifically teach means for detecting a physical presence of service personnel and time of said presence.

Thomason teaches a method and system for remote assistance and review of a technician serving equipment, wherein the technician is equipped with video and audio communication means for communication in real time with a manager or other authority (C. 2, L. 14-18). Transmission of video images of a technician servicing remote job site equipment to the authority site in real time obviously indicates detecting a physical presence of said technician at the servicing equipment, and determining time associated with said physical presence of said technician.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Carmody to include providing video and audio communication means between a technician, servicing remote job site equipment, and an authority site, for two-way communication in real time, as disclosed in Thomason,

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because it would advantageously allow to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claim 58,**

providing a system which provides services related to the monitoring and reporting operational equipment status of a plurality of wastewater treatment systems [0072];

electronically obtaining operational equipment status of a plurality of wastewater treatment systems [0072];

determining a date and time associated with service conducted by service personnel at each of said plurality of wastewater treatment systems [0129]; [0130]; [0132];

providing an inspection schedule for said plurality of wastewater treatment systems that is accessible through said computer network presence by said one or more service companies [0119]; [0124].

Carmody does not specifically teach that said system is a third party system.

However, Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity* which obtains reports from said system, said reports utilizing said received information.

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said system is a third-party system, because it would advantageously enhance the reliability of the systems reports.

Also, Carmody does not specifically teach detecting a physical presence of service personnel:

Thomason teaches a method and system for remote assistance and review of a technician serving equipment, wherein the technician is equipped with video and audio communication means for communication in real time with a manager or other authority (C. 2, L. 14-18). Transmission of video images of a technician servicing remote job site equipment to the authority site in real time obviously indicates detecting a physical

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presence of said technician at the servicing equipment, and determining time associated with said physical presence of said technician.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Carmody to include providing video and audio communication means between a technician, servicing remote job site equipment, and an authority site, for two-way communication in real time, as disclosed in Thomason, because it would advantageously allow to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claim 65,**

means for monitoring operational equipment status of a plurality of wastewater treatment systems [0072];

means for determining a date and time associated with service conducted by service personnel at each of said plurality of wastewater treatment systems [0129]; [0130]; [0132];

means for electronically storing inspection data related to scheduled inspections for each of said plurality of wastewater treatment systems [0115]; [0119];

a computer network being operable to communicate said stored data to a computer of a regulatory (governmental) entity [0069]; [0074].

Carmody does not specifically teach means for detecting a physical presence of service personnel and time of said presence.

Thomason teaches a method and system for remote assistance and review of a technician serving equipment, wherein the technician is equipped with video and audio communication means for communication in real time with a manager or other authority (C. 2, L. 14-18). Transmission of video images of a technician servicing remote job site equipment to the authority site in real time obviously indicates detecting and verifying a physical presence of said technician at the servicing equipment, and determining time associated with said physical presence of said technician.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Carmody to include providing video and audio communication means between a technician, servicing remote job site equipment, and

an authority site, for two-way communication in real time, as disclosed in Thomason, because it would advantageously allow to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

Dependent Claims.

Also, Carmody teaches:

**Claim 2**, said method, wherein said system provides notice of noncompliance (certification) with scheduled inspection [0074].

**Claim 3**, electronically storing operational status data, inspection data related to scheduled inspections for each of said plurality of wastewater treatment systems, and generating a report [0074]; [0115]; [0119].

**Claim 4**, generating a website operable for selectively providing said inspection data, said operational data, and said time data to respective computers of said one or more service companies and said regulatory body [0088]; [0097].

**Claim 5**, enabling generation of a desired (selected) report [0073].

**Claim 6**, enabling generation of a desired report [0073]. Information as to *format is selectable* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed. The method steps, disclosed in Carmody in view of Thomason would be performed the same regardless of the format of the desired (selected) format.

**Claim 7**, providing an inspection schedule for said wastewater treatment systems over the web page, accessible by service companies [0088].

**Claim 13**. Carmody in view of Thomason teach all the limitations of claim 13, except specifically teaching that that said system is a third party system.

However, Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity* which obtains reports from said system, said reports utilizing said received information [0053] – [0056].

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said system is a third-party system, because it would advantageously enhance the reliability of the systems reports.

**Claims 14 and 31.** Thomason teaches providing clock data regarding presence of service personnel at the service site (C. 2, L. 14-18). The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claim 15,** said system, wherein said storing means is utilized for storing data related to noncompliance (responsibility) with scheduled inspection [0074].

**Claim 16,** said system, wherein said data related to noncompliance (responsibility) includes contact information [0079]; [0104].

**Claim 17,** Carmody teaches said system including a web server [0094].

**Claim 18,** Carmody teaches said web server configured to utilize said information related to compliance data and to generate a desired (selected) report indicating incompliance with scheduled servicing of said wastewater treatment systems [0094]; [0075].

**Claims 26, 47 and 50,** Thomason teaches obtaining data regarding physical presence of service personnel at servicing equipment site (C. 2, L. 14-18). The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claims 35 and 83.** Thomason teaches obtaining data regarding physical presence of service personnel at servicing equipment site (C. 2, L. 14-18). Carmody teaches: comparing data and time of servicing the equipment with a threshold set in the system for various servicing events; generating notification identifying the system as

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having exceeded the threshold (noncompliance) [0072]. The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claims 38 and 86.** Carmody teaches monitoring the service history of each wastewater treatment system [0072]. Carmody does not specifically teach that said service history includes a record of when said wastewater treatment system starts initial operation for a first time or after a shutdown wherein repairs are made.

However, Carmody does teach that improper servicing and maintenance of wastewater treatment systems can pose a serious threat to both public health and the environment [0052]. Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said service history includes a record of when said wastewater treatment system starts initial operation for a first time or after a shutdown wherein repairs are made, because a comprehensive monitoring of said wastewater treatment systems would advantageously ensure the compliance with service requirements for said wastewater treatment systems, thereby ensure the avoidance of damage made to public health and the environment.

Also, Carmody does not teach detecting a physical presence of service personnel for said initial operation. Thomason teaches obtaining data regarding physical presence of service personnel at servicing equipment site (C. 2, L. 14-18). The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Claim 51.** Carmody in view of Thomason teach all the limitations of claim 51, except specifically teaching that that said system is a third party system.

However, Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity which obtains reports from said system, said reports utilizing said received information* [0053] – [0056].

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Furthermore, Carmody teaches:

**Claim 52**, generating a website accessible by a regulator (governmental) entity [0088]; [0097].

**Claim 53**, generating reports related to compliance with scheduled inspections and servicing of said wastewater treatment systems [0074].

**Claim 54**, generating notices related to noncompliance with scheduled inspections and servicing said wastewater treatment systems [0074].

**Claims 55, 56, 73 and 74.** Carmody teaches monitoring the service history of each wastewater treatment system [0072]. Carmody does not specifically teach that said service history includes a record of when said wastewater treatment system starts initial operation for a first time or after a shutdown wherein repairs are made.

However, Carmody does teach that improper servicing and maintenance of wastewater treatment systems can pose a serious threat to both public health and the environment [0052]. Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said service history includes a record of when said wastewater treatment system starts initial operation for a first time or after a shutdown wherein repairs are made, because a comprehensive monitoring of said wastewater treatment systems would advantageously ensure the compliance with service requirements for said wastewater treatment systems, thereby ensure the avoidance of damage made to public health and the environment.

Also, Carmody does not teach detecting a physical presence of service personnel for said initial operation. Thomason teaches obtaining data regarding physical presence of service personnel at servicing equipment site (C: 2; L: 14-18). The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

Furthermore, Carmody teaches:

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**Claim 59**, generating a website operable for selectively providing said inspection data, said operational data, and said time data to said regulator (governmental) entity [0088]; [0097].

**Claim 60**, providing authorized access to said website by said system [0088].

**Claim 61**, generating reports required by said regulator (governmental) entity [0073].

**Claim 62**, generating reports regarding compliance with scheduled inspection [0075].

**Claim 63**, generating noncompliance notices regarding noncompliance with scheduled inspection [0075].

**Claims 66 and 68**, Thomason teaches storing means for storing clock data regarding presence of service personnel at the service site (C. 2, L. 14-18). The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

Furthermore, Carmody teaches:

**Claim 67**, said system which performance is independent from: *the content of said information received from plurality of wastewater treatment systems*, and *actions taken by said regulatory (government) entity* which obtains reports from said system, said reports utilizing said received information [0053] – [0056].

**Claim 69**, said system, wherein said storing means is utilized for storing data related to noncompliance (responsibility) with scheduled inspection [0074].

**Claim 70**, said system, wherein said data related to noncompliance (responsibility) includes contact information [0079]; [0104].

**Claim 71**, said system including a web server for generating a website accessible by regulatory (governmental) entity [0094].

**Claim 72**, said system, wherein said web server configured to utilize said information related to compliance data and to generate a desired (selected) report indicating incompliance with scheduled servicing of said wastewater treatment systems [0094]; [0075].

**Claims 79 and 82.** Thomason teaches obtaining data regarding physical presence of service personnel at servicing equipment site (C. 2, L. 14-18). The motivation to combine Carmody with Thomason would be to assist the technician during his work, or authorize a specific way of action at the time of servicing the remote job site equipment.

**Dependent claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason and further in view of Jurca (US 4,949,263).**

**Claim 8.** Carmody and Thomason teach all the limitations of **claim 8**, except specifically teaching that the step of detecting a physical presence includes using mechanical switches installed at the equipment.

Jurca teaches equipment monitoring method and system, wherein said monitoring system is activated by a working personnel by operation of a mechanical on-off switch at the beginning of a working shift, and deactivated at the end of the working shift (C. 5, L. 33-36).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Carmody and Thomason to include using mechanical switches installed at the equipment, as disclosed in Jurca, because it would advantageously allow to use reliable and not expensive mechanisms, thereby save funds.

**Dependent claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason and further in view of Witts et al. (US 4,401,994) (Witts).**

**Claim 9.** Carmody and Thomason teach all the limitations of **claim 9**, except specifically teaching that the step of detecting a physical presence includes providing electronic reader to be activated by a respective identifier carried by a respective service personnel.

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Witts teaches employees time monitoring method and system, wherein electronic reader is provided for monitoring working time of employees in an industrial establishment (C. 2, L. 35-58).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Carmody and Thomason to include providing an electronic reader for detecting a physical presence of an employee, as disclosed in Witts, because it would advantageously allow to automate the detecting process.

**Dependent claims 23, 36, 48 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Kahleck et al. (US 5,673,190) (Kahleck).**

**Dependent claims 23, 36 and 48.** Carmody teaches all the limitations of claims 23, 36 and 48, except specifically teaching determining whether each service contract has been timely renewed.

Kahleck teaches multipurpose remote office machine management method and system, wherein scheduling of preventative maintenance and renewing a service contract is provided (C. 9, L. 46-47).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Carmody to include scheduling of preventative maintenance and renewing a service contract, as disclosed in Kahleck, because it would advantageously allow to keep equipment in working condition.

**Dependent claim 84.** Carmody teaches all the limitations of claim 84, except specifically teaching that said system is a third-party system.

However, Carmody's teachings indicate that the performance of said system is independent from: *the content of said information received from plurality of wastewater treatment systems, and actions taken by said regulatory (government) entity which obtains reports from said system, said reports utilizing said received information.*

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Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Carmody to include that said system is a third-party system, because it would advantageously enhance the reliability of the systems reports.

Also, Carmody does not specifically teach determining whether each service contract has been timely renewed.

Kahleck teaches multipurpose remote office machine management method and system, wherein scheduling of preventative maintenance and renewing a service contract is provided (C. 9, L. 46-47).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Carmody to include scheduling of preventative maintenance and renewing a service contract, as disclosed in Kahleck, because it would advantageously allow to keep equipment in working condition.

**Dependent claims 10-11, 19, 57 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason and further in view of Kahleck.**

**Dependent claims 10-11, 19, 57 and 64.** Carmody and Thomason teaches all the limitations of claims 10-11, 19, 57 and 64, except specifically teaching determining whether each service contract has been timely renewed.

Kahleck teaches multipurpose remote office machine management method and system, wherein scheduling of preventative maintenance and renewing a service contract is provided (C. 9, L. 46-47).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Carmody and Thomason to include scheduling of preventative maintenance and renewing a service contract, as disclosed in Kahleck, because it would advantageously allow to keep equipment in working condition.

#### **Remarks**

The applicant's declaration is acknowledged.

***Response to Arguments***

Applicant's arguments with respect to claims 1-88 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

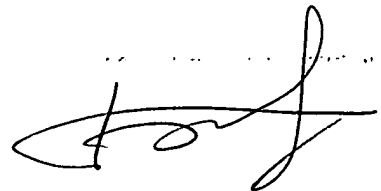
***Washington D.C. 20231***

or faxed to:

**(703) 305-7687** [Official communications; including After Final  
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

Igor N. Borissov  
Patent Examiner  
Art Unit 3629



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